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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,087

01/13/2005

Jeffrey A. Seder

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

08/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,087

Applicant(s)

SEDER, JEFFREY A.

Examiner

David J. Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-27, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 28, 29 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1-30-06, 3-13-06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 1-13-05 into the application file is acknowledged.

Election/Restrictions

2. Applicant's election of Species A in the reply filed on 7-27-07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 24-27 and 30-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-27-07.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means"

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and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it begins with an implied statement.

Correction is required. See MPEP § 608.01(b).

Drawings

4. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 8, 16-20, 22-23 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "the moderator band in the left ventricle" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "splenic cross sectional area" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "splenic cross sectional area measurements" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claims 18-20, 22-23 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what the "X" as seen in lines 2 and 4 of claim 18, lines 2 and 3 of claim 19, in line 2 of claim 20, in lines 3 and 5 of claim 21, in line 3 of claim 23, and in lines 7 and 11 of claim 29 is referring to.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 8-9 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by “Cardiac responses to training in 2-year old Thoroughbreds: an echocardiographic study” to Young (supplied by applicant), hereafter referred to as Young1.

Referring to claim 1, Young1 discloses a method of screening a racehorse candidate, the method comprising, obtaining a measurement of the width of the ventricular septal wall of the racehorse candidate – see pages 196-197, and comparing the measurement to a collection of measurements from a group of horses – see pages 195-197, wherein the collection of measurements comprises ventricular septal wall width measurements for horses of about the same age, sex and weight as the racehorse candidate – see pages 195-197.

Referring to claims 8-9, Young1 further discloses the ventricular septal wall width measurement is obtained by measuring, in a left parasternal short-axis view obtained at end diastole, the distance from the endocardial edge of the right ventricular free wall, at the point where the wall meets the interventricular septum, through the interventricular septum, to the point of attachment of the moderator band in the left ventricle – see pages 195-197.

Referring to claim 28, Young1 further discloses the racehorse candidate is a two year old – see pages 195-196.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5, 10-12, 15, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young1 as applied to claim 1 above.

Referring to claim 4, Young1 does not disclose the screening takes place at an auction. However, comparing physical statistics of a racehorse can be done at any location and applicant does not disclose that the screening taking place at an auction is critical to the operation of the invention in view of other locations and it is deemed that the method of Young1 would perform equally as well with the screening being done at an auction. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the screening being done at an auction, so as to allow for the user better select a horse during use.

Referring to claim 5, Young1 further discloses obtaining measurements that can be used to determine the cross-sectional area of the left ventricle in diastole of the racehorse candidate – see pages 195-197, wherein the collection of measurements further comprises left ventricle in diastole cross-sectional area measurements for horses about the same age, sex and weight as the racehorse candidate – see pages 195-197. Young1 does not disclose measuring the cross-sectional area of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the measuring of the cross-sectional area of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 10, Young1 further discloses the left ventricle in diastole cross-sectional area measurement is obtained by measuring the circumference of the left ventricular chamber – see pages 195-197.

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Referring to claim 11, Young1 further discloses the left ventricle in diastole cross sectional area measurement is obtained from a left parasternal short-axis echocardiogram of the left ventricle of the racehorse – see pages 195-197.

Referring to claims 12 and 21, Young1 further discloses obtaining measurements that can be used to determine the cross-sectional area of the left ventricle in systole of the racehorse candidate – see pages 195-197, wherein the collection of measurements further comprises left ventricle in diastole cross-sectional area measurements for horses about the same age, sex and weight as the racehorse candidate – see pages 195-197. Young1 does not disclose measuring the cross-sectional area of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the measuring of the cross-sectional area of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 15, Young1 does not disclose obtaining a measurement of the cross-sectional area of the spleen of the racehorse candidate, wherein the collection of measurements further comprises splenic cross-sectional area measurements of horses of about the same age, sex and weight as the racehorse candidate. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the measuring of the spleen, so as to determine the health of the racehorse.

Referring to claim 18, Young1 discloses obtaining a weight measurement and the collection of weight measurements from horses of about the same age and sex as the racehorse candidate – see pages 195-197. Young1 does not disclose obtaining height measurements. However, it would have been obvious to one of ordinary skill in the art to take the device of

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Young1 and add the obtaining of height measurements of horses, so as to allow for the comparisons of the horses to be made more accurate.

Claims 2-3, 6-7, 13-14, 16-17, 19-20, 22-23, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young as applied to claims 1, 5, 12 or 21 above, and further in view of “Relative Wall Thickness: A Useful Indicator of Sports Specific Cardiac Adaptations to Training in Horses” to Young (supplied by applicant) hereafter referred to as Young2.

Referring to claim 2, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user.

Referring to claim 3, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of

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ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as allow for more competitive racing horses to be predicted and picked by the user.

Referring to claim 6, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 7, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 13, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1

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does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 14, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as

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modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle, so as to allow for the health of the racehorse to be predicted.

Referring to claim 16, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the spleen. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the spleen, so as to allow for the health of the racehorse to be predicted.

Referring to claim 17, Young1 further discloses comparing the measurements of the ventricular septal wall and therefore a racehorse with a septal wall greater than the mean septal

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wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the spleen. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the spleen, so as to allow for the health of the racehorse to be predicted.

Referring to claim 19, Young1 further discloses comparing the measurements of the ventricular septal wall and the weights and therefore a racehorse with a septal wall greater than the mean septal wall width can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing

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septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing the height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing the height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 20, Young1 further discloses comparing the measurements of the ventricular septal wall and weights and therefore a racehorse with a septal wall greater than the mean septal wall width and weight greater than the mean weight can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as

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allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of the height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claims 22 and 29, Young1 further discloses comparing the measurements of the ventricular septal wall and weight and therefore a racehorse with a septal wall greater than the mean septal wall width and weight greater than the mean weight can be viewed from the collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle and height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle and height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 23, Young1 further discloses comparing the measurements of the ventricular septal wall and weight and therefore a racehorse with a septal wall greater than the mean septal wall width and weight being greater than the mean weight can be viewed from the

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collection of measurements – see pages 195-197. Young1 does not disclose selecting a racehorse candidate by comparing septal wall measurements of horses. Young2 does disclose selecting a racehorse candidate by comparing septal wall measurements of horses – see pages 554-555.

Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing septal wall thickness of horses of Young2, so as to allow for better racing horses to be predicted and picked by the user.

Young1 as modified by Young2 does not disclose selecting a racehorse with a septal wall width that is in the 75th percentile or higher when compared to septal wall measurements of the collection of measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the selection of a horse having a septal wall width at or greater than the 75th percentile of measured septal wall widths, so as to allow for more competitive racing horses to be predicted and picked by the user. Young1 as modified by Young2 does not disclose comparing cross sectional areas of the left ventricle and height measurements. However, it would have been obvious to one of ordinary skill in the art to take the method of Young1 as modified by Young2 and add the comparing of cross-sectional measurements of the left ventricle and height measurements, so as to allow for the health of the racehorse to be predicted.

Referring to claim 32, Young1 further discloses obtaining an echocardiographic image of the heart of the racehorse – see pages 195-197, rating the image according to at least one cardiac parameter selected from the group of the general shape of the heart at diastole and systole and clarity of the image in diastole – see pages 195-197 and ratings of a group of horses of about the same age, sex and weight of the racehorse candidate – see figures 195-197. Young1 does not

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disclose comparing the ratings of the images with other horses. Young2 does disclose comparing echocardiograph images of horses – see pages 554-55. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Young1 and add the selection of a racehorse candidate by comparing echocardiograph images of horses of Young2, so as to allow for more competitive racing horses to be predicted and picked by the user.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to devices and methods of measuring physical features of animals in general:

U.S. Pat. No. 4,008,713 to Griffith et al. – shows measuring heart

U.S. Pat. No. 4,357,944 to Mauser et al. – shows heart measurements

U.S. Pat. No. 5,100,127 to Melnick et al. – shows monitoring of horses

U.S. Pat. No. 5,680,862 to Song et al. – shows measurements of heart

U.S. Pat. No. 5,779,631 to Chance – shows measurements of physical data

U.S. Pat. No. 6,134,460 to Chance – shows measurements of physical data

U.S. Pat. No. 6,602,209 to Lambert et al. – shows measuring physical data

GB Pat. No. 2400907 – shows measuring physical data


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DAVID PARSLEY
PRIMARY EXAMINER